

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

AUG 25 2008

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August 21, 2008

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Honorable Deborah A. Batts
United State Courthouse
Southern District of New York
500 Pearl Street, Rm. 2510
New York, New York 10007-1312

Re: Tolliver v. Ercole, et al. / 08 Civ. 4023 (DAB)(KNF)

Dear Judge Batts

MEMO ENDORSED

I represent defendants Robert Ercole and Robert Cunningham. I write to respectfully request an extension of time by which these defendants must move or answer with respect to the complaint. Upon information and belief, defendant Thomas Walsh has not yet been served with the summons and complaint and has not requested representation from this Office pursuant to New York State Public Officers Law § 17. If and when defendant Walsh is served, he will join in this request for an extension. This is defendants' first request for an extension of time. Plaintiff pro se has not been contacted for his consent as he is presently incarcerated.

DAB
8/28/08
granted

Defendant Ercole was served on August 8, 2008 and defendant Cunningham was served on August 12, 2008. Accordingly, their answers are due on August 28, 2008 and September 1, 2008, respectively. I respectfully request until October 24, 2008 to file responsive papers.

DAB
9/28/08
granted

At this time, defendants believe that a motion to dismiss may be appropriate as to several of the defendants and with respect to plaintiff's conspiracy claim. Accordingly, an extension of time is necessary in order to obtain the necessary files and documents referred to in the complaint (including, but not limited to, plaintiff's misbehavior report, disciplinary hearing packet and unusual incident report), investigate the facts, research applicable law and draft responsive papers. In light of the fact that the basis of plaintiff's lawsuit is a disciplinary hearing held on March 12, 2008, March 19, 2008 and April 8, 2008, I will need time to obtain all of the tape recordings of these proceedings, as well as the four tapes that plaintiff claims were presented as evidence during the hearing, and to have them all transcribed in order to draft response papers. The additional time may also allow for the remaining defendant to be served and request representation so that a joint motion or answer may be filed on his behalf.

MEMO ENDORSED

Honorable Deborah A. Batts

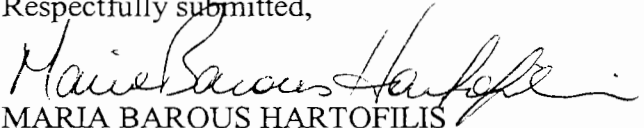
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In addition, in light of the fact that defendants will be moving to dismiss, defendants respectfully request a stay of discovery pending a decision on the motion.

Wherefore, it is respectfully requested that defendants' time to move or answer with respect to the complaint be extended to October 24, 2008 and that all discovery be stayed pending a decision on the motion.

Respectfully submitted,


MARIA BAROUS HARTOFILIS
Assistant Attorney General

cc: Eric Tolliver
Plaintiff, pro se

SO ORDERED



DEBORAH A. BATTIS
UNITED STATES DISTRICT JUDGE